CARL W. CLARK

IBLA 81-801 Decided June 29, 1982

Appeal from decision of Arizona State Director, Bureau of Land Management, denying the protest of the designation of inventory unit AZ 2-127 as a wilderness study area. 8500(931)

Affirmed.

1. Federal Land Policy and Management Act of 1976: Wilderness -- Wilderness Act -- Words and Phrases

   "Roadless." H.R. Rep. No. 94-1163, 94th Cong., 2nd Sess. 17 (1976), provides a definition of "roadless" adopted by the Bureau of Land Management in its Wilderness Inventory Handbook. The word "roadless" refers to the absence of roads which have been improved and maintained by mechanical means to insure relatively regular and continuous use. A way maintained solely by the passage of vehicles does not constitute a road.

2. Federal Land Policy and Management Act of 1976: Wilderness -- Wilderness Act

   Where the record evidences BLM's first-hand knowledge of the lands within an inventory unit and contains comments from the public as to the area's fitness for wilderness preservation, BLM's subjective judgments of the area's naturalness qualities, opportunities for solitude, or primitive and unconfined recreation, are entitled to considerable deference.

3. Federal Land Policy and Management Act of 1976: Wilderness -- Mining Claims: Generally
   The Bureau of Land Management is directed by sec. 603(c) of the Federal Land Policy and Management Act of 1976 (FLPMA),

> 43 U.S.C. § 1782(c) (1976), to manage lands under review for wilderness suitability so as to prevent impairment of wilderness characteristics, except that the continuation of existing mining uses in the same manner and degree in which they were being conducted on the date of enactment of FLPMA (Oct. 21, 1976) is allowed. Such grandfathered use is properly regulated to prevent unnecessary or undue degradation of the land and its resources.

APPEARANCES: W. T. Elsing, Esq., Phoenix, Arizona, for appellant; Dale D. Goble, Esq., Office of the Solicitor, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Carl W. Clark appeals from a decision of the Arizona State Director, Bureau of Land Management (BLM), dated March 12, 1981, denying his protest of the designation of inventory unit AZ 2-127 as a wilderness study area (WSA). This unit, Little Horn Mountains East, is located in east-central Yuma County and includes 91,930 acres of BLM-administered land.

BLM's designation of WSA's was taken pursuant to section 603(a) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1782 (1976). That section directs the Secretary to review those roadless areas of 5,000 acres or more and roadless islands of the public lands which were identified during the inventory required by section 201(a) of the Act as having wilderness characteristics described in the Wilderness Act of September 3, 1964, 16 U.S.C. § 1131(c) (1976). Following review of an area or island, the Secretary shall from time to time report to the President his recommendation as to the suitability or nonsuitability of each such area or island for preservation as wilderness.

The wilderness characteristics alluded to in section 603(a) are defined in section 2(c) of the Wilderness Act, 16 U.S.C. § 1131(c) (1976):

> A wilderness, in contrast with those areas where man and his own works dominate the landscape, is hereby recognized as an area where the earth and its community of life are untrammeled by man, where man himself is a visitor who does not remain. An area of wilderness is further defined to mean in this chapter an area of undeveloped Federal land retaining its primeval character and influence, without permanent improvements or human habitation, which is protected and managed so as to preserve its natural conditions and which (1) generally appears to have been affected primarily by the forces of nature, with the imprint of man's work substantially unnoticeable; (2) has outstanding opportunities for solitude or a primitive and unconfined type of recreation; (3) has at least five thousand acres of land or is of sufficient

size as to make practicable its preservation and use in an unimpaired condition; and (4) may also contain ecological, geological, or other features of scientific, educational, scenic, or historical value.

The review process undertaken by the State Offices pursuant to section 603(a) has been divided into three phases by BLM: Inventory, study, and reporting.

Appellant alleges that he has a lease and option on certain mining claims and is the locator of other claims. 1/ In his protest of December 29, 1980, appellant alleged in general that the area in issue has no semblance of a wilderness area and should be dropped from consideration as a WSA. Specifically, he contended that there are bladed roads running through the WSA which are essential to the proper development of the mining claims. He asserted that these "roads" are used by agents of BLM, the Arizona State Game and Fish Commission and private parties. In its response to the protest dated March 12, 1981, BLM stated that the routes to the Bronco-Verdstone Claims and the Oakland Claims are considered to meet the definition of roads and are cherrystemmed. In its narrative in the intensive inventory findings, BLM noted a total of 13 vehicle ways traversing 38 miles, but concluded that these imprints have no cumulative affect on the unit's naturalness.

[1] In his statement of reasons, appellant adds that there is a network of roads which were bulldozed and are in relatively regular continuous use. The significance of appellant's allegation that roads within the WSA have been bladed and bulldozed is to be found in the Wilderness Inventory Handbook (WIH) issued by BLM on September 27, 1978.
2/ Therein, BLM quoted from H.R. Rep. No. 94-1163 at page 17, which set forth the definition of a road adopted by BLM: "The word 'roadless' refers to the absence of roads which have been improved and maintained by mechanical means to insure relatively regular and continuous use. A way maintained solely by the passage of vehicles does not constitute a road."

Appellant's allegations of blading and bulldozing are insufficient to reverse BLM's boundary modification, because there is lacking in them specific information as to who constructed and maintains the route by mechanical means and when such activities occurred, or other corroborative evidence. In the absence of such information, we grant considerable deference to BLM's findings in such matters. Conoco, Inc., 61 IBLA 23, 30 (1981); National Outdoor Coalition, 59 IBLA 291, 299-300 (1981).

Appellant listed other intrusions in his protest including shafts, trenches, and other excavations, countless adits, many discovery holes, extensive dumps, three concrete pads for leaching, a headframe, a windlass, and a tin shed on the Oakland claim which is occupied sporadically.

1/ From the information provided, it appears that at least some of these claims are located within unit AZ 2-127.

2/ This handbook is Organic Act Directive 78-61.

In response, BLM explained that the two shafts in the vicinity of the Bronco-Verdstone claims have been deleted from the WSA as well as the tin cabin, three mining shafts, dumps, and tailing piles connected with the Oakland Claims. Regarding the remaining intrusions, BLM stated that there was no accumulation of impacts that would warrant eliminating additional natural area surrounding these imprints. BLM found that there are occasional small and insignificant exploratory pits or trenches which are noticed only upon direct encounter. BLM determined that the area within the WSA remains natural with the imprints of man substantially unnoticeable.

[2] While the items listed by appellant are undeniably intrusions, we note that in setting forth the definition of wilderness, quoted above, Congress did not require that a wilderness area be free of all imprints of man. Instead, Congress required that an area generally appear to have been affected primarily by the forces of nature, with the imprint of man's work substantially unnoticeable. Indeed, in H.R. Rep. No. 95-540, 94th Cong., 2d Sess. 6 (1977), a report prepared to accompany H.R. 3454, 2/ there are listed several examples of intrusions which may be allowed in a designated wilderness area. Among these are trails, trail signs, bridges, fire towers, firebreaks, fire suppression facilities, pit toilets, fisheries enhancement facilities, fire rings, hitching posts, snow gauges, water quantity and quality measuring devices, and other scientific devices. Based on this guidance, BLM has set forth in its WIH examples of intrusions found on the public lands which, it finds, may be present within a WSA. These additional items include research monitoring markers and devices, wildlife enhancement facilities, radio repeater sites, air quality monitoring devices, fencing, and spring development.

As there is apparently no question that the lands contain imprints of man, appellant's objections to such imprints reduce to a disagreement with BLM as to whether such imprints are substantially noticeable. This question, of course, calls for a highly subjective determination by BLM. In Conoco, Inc., supra, we held that BLM's subjective judgment as to an area's naturalness qualities was entitled to considerable deference by this Board. We believe a similar holding is appropriate in the instant appeal. Inventory case files assembled by BLM evidence its first-hand knowledge of the lands at issue. In addition, BLM has received the benefit of numerous comments from individuals and groups of wide ranging interests. BLM's expertise and familiarity with the units on the ground entitle it, we believe, to our considerable deference in such subjective determinations. Appellant's views to the contrary, while not unreasonable, do not undermine this deference.

Appellant has also challenged the WSA designation on the basis that the area lacks certain wilderness characteristics due to the intrusion of outside "sights and sounds." These alleged intrusions include the adjoining Sheep Tank Mine, which is in operation, and airplanes from the Luke Field Training Area, as well as scheduled airflights, which appellant contends deprive the area of a semblance of solitude.

Organic Act Directive (OAD) 78-61, Change 3, July 12, 1979, states at page 4:

> Assessing the effects of the imprints of man which occur outside a unit is generally a factor to be considered during study. Imprints of man outside the unit may be considered during inventory only in situations where the imprint is adjacent to the unit and its impact is so extremely imposing that it cannot be ignored, and if not used, reasonable application of inventory guidelines would be questioned. Imprints of man outside the unit, such as roads, highways, and agricultural activity, are not necessarily significant enough to cause their consideration in the inventory of a unit. However, even major impacts adjacent to a unit will not automatically disqualify a unit or portion of a unit. [Emphasis in original.]

Therefore, outside sights and sounds must be considered during the inventory phase only to the extent they might deprive an area of wilderness characteristics. City of Colorado Springs, 61 IBLA 124 (1982); Union Oil Co. (On Reconsideration), 58 IBLA 166, 170 (1981); (appeal pending.)

In response to appellant's protest, BLM stated that the Sheep Tank Mine has no effect on the immediate area. BLM explained that the mine and historic sites surrounding it are 5 miles to the east on the Kofa Game Refuge and are adjacent on three sides to a Fish and Wildlife Service wilderness proposal. Regarding the airplanes, BLM said that periodic overflights by military aircraft would only be accounted for if they were "so extremely imposing that they could not be ignored," and that this does not seem to be the case.

Appellant has failed to establish that the outside "sights and sounds" are either substantially noticeable, such as to affect the area's naturalness, or that they render the area devoid of outstanding opportunities for solitude. As we have previously stated in Tri-County Cattlemen's Association, 60 IBLA 305, 309 (1981), outstanding opportunities need not be available at all times and at all places in a unit.

In his protest, appellant described the area as desolate and uninteresting with no attractive features. He stated that there are no archeological sites and nothing of historical, educational, scientific, or scenic value. Appellant contends that this area is shunned by recreationalists.

BLM responded to appellant's comments by stating that the exceptional size of undisturbed desert, and the complex arrangement of terrain provide ample opportunity for experiencing solitude. BLM explained that the fact that the area is desolate and the vegetation is sparse adds to the feeling of solitude for many people.

In its narrative, BLM stated that the variety of topography found in the unit and its size provide outstanding opportunities for primitive recreation. For examples, BLM cited hiking for extended periods without a sign

of human imprint; sightseeing opportunities such as the Kofa volcanics and the extensive vistas of surrounding mountains; and hunting opportunities, especially deer.

Section 2(c) of the Wilderness Act requires that an area have "outstanding opportunities for solitude or a primitive and unconfined type of recreation." (Emphasis added.) 16 U.S.C. § 1131(c) (1976). An area may meet either criterion. See WIH at 13. BLM found that this unit meets both criteria. Appellant's comments as they relate to the outstanding opportunities criterion amount to little more than simple disagreement with BLM's determination that the WSA's do in fact possess such opportunities. As we stated above in our discussion of naturalness characteristics, BLM's determination of the presence of outstanding opportunities calls for a highly subjective judgment on its part. Because of its expertise gained from its first-hand knowledge of the lands and the comments of interested persons, we believe that BLM's judgment is entitled to considerable deference. By this statement, we do not mean to imply that BLM's determination will be immune from review. To the contrary, BLM's documentation for its judgment will be carefully studied, as will the documentation of an appellant. An appellant will, however, have a particularly heavy burden to support a reversal of BLM's subjective conclusions. We cannot say that appellants have met this burden on the issue of the unit's outstanding opportunities for solitude or a primitive and unconfined type of recreation. Asarco Inc., 64 IBLA 50, 60 (1982); Conoco, Inc., supra at 28.

The decision to designate an area as a WSA will be affirmed in the absence of compelling reasons for modification or reversal. The burden of showing error is on one challenging the decision. Richard J. Leaumont, 54 IBLA 242, 88 I.D. 490 (1981); Sierra Club, 54 IBLA 31 (1981). In the present case, appellant has failed to offer compelling reasons for disturbing the State Director's assessment of the wilderness characteristics of the unit. He has not shown that the Director failed to consider adequately all of the factors involved.

[3] In his final argument, appellant contends that his property is being taken without just compensation and requests a jury trial, in order to seek damages. Appellant's contention is without merit. The fact that lands are included within a WSA does not mean that mining is precluded on these lands. Section 603(c) of FLPMA authorizes continuation of existing uses, such as mining, in the same "manner and degree" as they were being conducted on October 21, 1976. In the case of such an existing use conducted in the same manner and degree, BLM is authorized to regulate only so as to prevent unnecessary or undue degradation of the environment. State of Utah v. Andrus, 486 F. Supp. 995, 1005 (D. Utah 1979); Havlah Group, 60 IBLA 349, 88 I.D. 1115 (1981).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Edward W. Stuebing
Administrative Judge

We concur:

Anne Poindexter Lewis
Administrative Judge

Gail M. Frazier
Administrative Judge